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C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 000077

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SUBJECT: BOSNIA: COUNCIL OF MINISTERS ADOPTS LONG AWAITED  
NATIONAL WAR CRIMES STRATEGY, NOW COMES THE HARD PART --  
IMPLEMENTATION

REF: A) 08 SARAJEVO 1476 B) 08 SARAJEVO 1221 C) 08  
SARAJEVO 747 D) 08 SARAJEVO 161 E) 07  
SARAJEVO 2555 F) 07 SARAJEVO 2073 G) 07  
SARAJEVO 2201

Classified By: Michael J. Murphy for Reasons 1.4 (B) and (D)

¶1. (C) SUMMARY: The Council of Ministers (CoM) on December 29 adopted a National War Crimes Strategy that establishes the framework for the prosecution of war crimes committed during the 1992-1995 war. The initiative marks a milestone in Bosnia's efforts to prosecute war crimes and promote national reconciliation. The strategy's adoption was also the remaining element of the rule of law objective set by the Peace Implementation Council (PIC) for closure of the Office of the High Representative (OHR) and transition to the European Special Representative (EUSR). The strategy maintains the current division of labor for war crimes prosecution between state and local level courts, and foresees the prosecution of the country's most egregious war crimes within seven years and other war crimes within fifteen years. Reactions to the strategy's adoption have been limited and mixed. The Office of the High Representative (OHR) welcomed the initiative, while some key justice officials and experts have expressed concerns about the strategy's flaws. We also believe the strategy is an important step forward, but recognize that the real test will come with its implementation. In the face of continued attacks against the judiciary, primarily by Republika Srpska, robust international engagement will be needed to ensure that the strategy is fully implemented. END SUMMARY.

The CoM Adopts the National War Crimes Strategy  
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¶2. (U) The Council of Ministers (CoM) on December 29, without fanfare, adopted a long awaited national war crimes strategy, potentially ushering in a new era for war crimes prosecution in Bosnia. The strategy, which took over a year to produce (first by the State Prosecutor's Office and then by a working group composed of representatives from the state, the entities, and Brcko District), provides the framework for the prosecution of war crimes committed during the 1992-1995 war. Domestic and international critics had long criticized the Bosnian government for failing to create a meaningful, workable strategy to ensure that war crimes victims and their families receive justice for the crimes committed against them. The strategy's adoption allows Bosnia to answer these criticisms. It also allows Bosnia to

fulfill the last element of the rule of law objective the PIC required to permit the transition of OHR to EUSR.

#### War Crimes Cases to be Completed by 2024

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¶3. (U) The strategy, whose scope is limited to war crimes prosecution, is largely based on a draft crafted by State Court President Meddzida Kreso, but incorporates elements drawn from a competing, unfinished draft produced by the State Prosecutor's Office, which originally had the lead on the initiative. The strategy emphasizes the need to prioritize cases and sets deadlines by which cases should be resolved: the most egregious war crimes cases must be prosecuted within seven years and all other war crimes cases within fifteen years. It also maintains the current division of labor for war crimes cases (which are processed by the state, the entities, and Brcko District), following lengthy deliberations about the merits of a decentralized (current system) versus a centralized system (state-level only prosecutions to ensure uniformity of laws and practices).

#### Strategy Introduces New Case Management Mechanisms

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¶4. (U) The strategy contains several provisions aimed at strengthening the manner in which war crimes cases are managed. It obligates prosecutors' offices and courts around the country to submit regular reports about war crimes cases to the State Prosecutor's Office; the State Prosecutor's Office to establish a centralized database of all war crimes

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cases in country; and the State Court to track all confirmed indictments, first instance, and second instance verdicts involving war crimes. The strategy also proposes several amendments to the BiH CPC that would facilitate war crimes prosecution, but of course, these would need to be adopted by parliament, which could take months or longer.

#### Harmonization of Legislation and Court Practices

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¶5. (U) The strategy aims to promote harmonization of war crimes-related legislation and court practices in an effort to compensate for the absence of an over-arching Supreme Court that could reconcile conflicting legislation. The strategy advocates amending existing legislation to permit regular joint sessions of the State Court's Appellate Department for War Crimes, entity Supreme Courts, and Brcko District's Appellate Division regarding war crimes cases. The results of these exchanges would not be binding, however. The strategy also explicitly encourages entity courts to follow the State Court's case law and to apply existing standards involving case transfers from the ICTY to the State Court and the State Court's use of evidence collected by the ICTY. This includes accepting proven facts established in legally binding ICTY decisions.

#### Other Key Elements

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¶6. (U) The strategy's other key elements include calls for:

- specialized training for judicial personnel on war crimes prosecution;
- revising performance evaluation standards to ensure that judges, prosecutors, and other staff receive credit for the complexity of war crimes cases;
- periodic meetings between Bosnian judicial officials and counterparts in the region to strengthen judicial cooperation mechanisms and discuss case transfers, extradition of dual citizens, ICTY archives/legacy, and other issues;
- additional witness protection training for State Investigative and Protective Agency (SIPA) personnel;
- development of entity witness protection programs;
- creation of a witness and victim support network

nation-wide;  
-- an analysis by the HJPC of costs associated with war crimes prosecution; and,  
-- establishment by the CoM of a supervisory body to monitor the strategy's implementation.

#### Strategy Omits References to the International Presence

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¶7. (C) Notably, the strategy omits references to the possibility of extending international judges and prosecutors working at the State Court and the State Prosecutor's Office past a legislatively mandated December 2009 deadline. As reported previously (Ref D), the heads of the state-level judicial institutions, with our and the European Commission's backing, have asked the State Minister of Justice to put forward needed legislative changes to permit a three-year extension of the prosecutors and a reduced number of judges. We have sought political support for the project, but are facing significant resistance, especially by RS-based politicians. The omission of references to an extended international presence reflects the lack of political agreement among politicians on the issue and the working group's desire to secure the strategy's adoption at the earliest opportunity (ahead of the March PIC).

#### Strategy Elicits Limited, Mixed Reactions

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¶8. (C) There has been limited, mixed comment on the strategy's adoption to date. OHR issued a press release the day the strategy was adopted, saying that it welcomed the initiative, while reminding Bosnian officials that they are now obliged to fully implement it. Privately, OHR staffers told us that the strategy was a &fairly good& document and was the best that could be achieved politically. However, State Court President Kreso, in the December 12 edition of

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the weekly magazine Dani and subsequently in the December 17 edition of the RS-based daily Nezavisne Novine, outlined her reasons for resigning from the working group and for opposing the strategy (though it was based in large part on her draft). President Kreso claimed that, if the CoM adopted the strategy, it would return the country to the conditions of 1996, namely "legal insecurity, arbitrary arrests, and prosecutions." She referred to alleged unlawful prosecutions by entity courts of war crimes cases investigated after March 2003 and to inaccurate war crimes-related statistics included in the strategy. Members of the working groups and other stakeholders interpret Kreso's comments as politically motivated and somewhat disingenuous, noting that Kreso's draft strategy largely served as the basis for the strategy that was adopted by the CoM.

¶9. (C) David Schwendiman, the head of the State Prosecutor's Special Department for War Crimes, and other judicial experts shared their disappointment with the strategy privately with us. They said that while the strategy is a good starting point and had allowed discussions about complex, politically sensitive issues that had long been relegated to the back burner to take place, the strategy had been rushed, and opportunities to take a forward-leaning approach to war crimes prosecution had been squandered. They pointed to a list of flaws or omissions in the strategy that must be addressed, such as the inclusion of unreliable statistics about war crimes cases -- it is unclear whether these statistics refer to criminal complaints or cases ready for prosecution; lack of clarity on whether the supervisory body called for in the strategy will have the power to enforce implementation of the strategy; arbitrary deadlines for the resolution of cases; and, the lack of an evaluation of the financial costs associated with war crimes prosecution. These experts also maintained that there had been insufficient participation by cantonal/district judges and prosecutors and civil society in the drafting of the

strategy, which they said could lead to problems with these groups' buy-in.

Comment

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¶10. (C) The adoption of a national war crimes strategy, which was driven by the international community's insistence that it be included in the 5 2 framework, is a welcome milestone for war crimes prosecution and national reconciliation in Bosnia. While imperfect, it includes key provisions that set deadlines for the processing of cases, create a central database of cases, and promote harmonization of legislation. The onus is now on the Bosnian government to fully and expeditiously implement, and when needed, refine the strategy. The international community will have to vigilantly monitor this process, given the Bosnian politicians' penchant for walking back commitments on needed reforms.  
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